

Fair Political Practices Commission

MEMORANDUM

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Scott Hallabrin, General Counsel

Subject: Finding Required for Holding Special Meeting on Less than 10 Days' Notice – Government Code Section 11125.4(c)

Date: July 11, 2008

Proposed Commission Action and Staff Recommendation: Make a finding, under Government Code Section 11125.4(c), that holding this meeting on less than the usual 10 days' notice is necessary, as described below.

Reason and Authority for Meeting on Less than 10-Days' Public Notice: This meeting has been convened by giving less than the usual 10-days' notice to the public. This is permissible under Government Code Section 11125.4 when a state body needs to consider, among other things, pending litigation and compliance with the usual 10-day pre-meeting notice requirement in the Bagley-Keene Open Meeting Act (see Gov. Code Sec. 11125) "would impose a substantial hardship on the state body or where immediate action is required to protect the public interest." (Gov. Code Sec. 11125.4(a).) When a body acts under this provision, it must give at least 48-hours' advance notice of its meeting (see Gov. Code Sec. 11125(b)) and make the finding of substantial hardship or protecting the public interest in open session.

On July 3, 2008, the Commission staff attended a mandatory settlement conference in federal court in the case of *Carole Migden, et al. v. California Fair Political Practices Commission, et al.* (Federal District Court for the Eastern District of California, Case No. 2:08-CIV-486 LEW-EFB). As a result of issues discussed at that conference, the Commission staff was directed by the court to present the issues to the Commission for its consideration and notify the court no later than July 17, 2008, of the Commission's response to the issues. In addition, the parties stipulated, and the court agreed, to temporarily delay further proceedings in this case until after the Commission meets. The proximity of the settlement conference to the July 4th holiday and the complexities of contacting Commissioners to arrange their attendance at, and actually arranging, a Commission meeting by July 17th have made it impractical for the Commission to hold a meeting by July 17th and comply with the requirement that the Commission give 10-days' public notice prior to that meeting. If, at this point, the Commission is required to give 10-days' notice before meeting on this matter it cannot comply with the court's directive to provide a reply to the court by July 17th. Therefore, to comply with the court's directive, it is necessary for the Commission to hold a special meeting to deliberate issues

discussed at the settlement conference and provide less than the usual 10-days' notice prior to holding the meeting, as permitted under Government Code Section 11125.4.

Recommended Finding: Based on the foregoing, staff proposes the Commission make the following findings:

1. The Commission is a party in the case of *Carole Migden, et al. v. California Fair Political Practices Commission, et al.* (Federal District Court for the Eastern District of California, Case No. 2:08-CIV-486 LEW-EFB).
2. At a mandatory settlement conference on this case held on July 3, 2008, the court directed the Commission staff to present issues discussed at the conference to the Commission for its consideration and inform the court of the Commission's response no later than July 17, 2008.
3. The proximity of the settlement conference to the July 4th holiday and the complexities of contacting Commissioners to arrange their attendance at, and of actually arranging, a Commission meeting by July 17th have made it impractical to comply with the requirement that the Commission give 10-days' public notice of a meeting before the July 17th date.
4. If the Commission holds the meeting after July 17, 2008, it will violate the court's directive to hold a meeting and report to the court by July 17th; this would jeopardize the public interest.
5. It is therefore necessary for the Commission to hold this hearing on less than 10-days' notice as permitted under Government Code Section 11125.4.

Voting on the Finding: Government Code Section 11125(c) requires a two-thirds vote (four votes) to make the finding if all Commissioners are present and a unanimous vote if less than all Commissioners are present.